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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

vs.

TESLA, INC.

Defendant.

Case No.: 3:23-cv-04984-JSC

**[PROPOSED] FIRST STIPULATED
ORDER RE: DISCOVERY OF
ELECTRONICALLY STORED
INFORMATION FOR STANDARD
LITIGATION**

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I. PURPOSE

This Order will govern the production and formatting of electronically stored information (ESI) in this case as a supplement to the Federal Rules of Civil Procedure, this Court's Guidelines for the Discovery of Electronically Stored Information, and any other applicable orders and rules.

II. COOPERATION

The parties are aware of the importance the Court places on cooperation and commit to cooperate in good faith throughout the matter consistent with this Court's Guidelines for the Discovery of ESI.

III. LIAISON

The parties have identified liaisons to each other who are and will be knowledgeable about and responsible for discussing their respective ESI. Each e-discovery liaison will be or will have access to those who are knowledgeable about the technical aspects of e-discovery, including the location, nature, accessibility, format, collection, search methodologies, and production of ESI in this matter. The parties will rely on the liaisons, as needed, to confer about ESI and to help resolve disputes without court intervention.

IV. PRESERVATION

The parties have discussed their preservation obligations and needs and agree that preservation of potentially relevant ESI will be reasonable and proportionate. To reduce the costs and burdens of preservation, the parties agree to supplement this Order with an ESI Protocol that will address the preservation of ESI, as stipulated by the parties in their Joint Case Management Conference Statement. *See* ECF 50, p. 8. Nothing in this stipulation is intended to abrogate or alter the parties' obligations with respect to preserving ESI.

V. SEARCH

The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or earlier if appropriate, they will meet and confer as needed about methods to search ESI in order to identify ESI that is subject to production in discovery and filter out ESI that is not subject to discovery.

VI. PRODUCTION FORMATS

The parties agree to the format for production as described herein as well as Exhibit A.

1 **A. Paper Documents**

2 Hard copy documents shall be scanned to single-page TIFF Group IV format (300 DPI
3 resolution) with corresponding searchable OCR text and be logically unitized. The file name for the
4 TIFF image shall be the Bates/PageID Number. Scanned documents shall also be converted into
5 searchable text using optical character recognition (OCR), extracted, and saved as a text file named
6 with the Bates/PageID Number. The OCR shall include the Bates/PageID number for each page. The
7 load file shall include a field for the OCR/Text file path.

8 **B. Email and User-Created Files**

9 The parties will produce documents in accordance with the specifications identified in this
10 section. ESI will generally be produced in single-page TIFF format (300 DPI resolution) with
11 corresponding document-level extracted text and a delimited DAT file containing the metadata fields
12 outlined in Exhibit A.

13 1. All spreadsheet and presentation files (e.g., Excel, PowerPoint) shall be produced in
14 native format with an associated placeholder image, and a native file path contained in the DAT file
15 to the native file.

16 2. All hidden text (e.g., track changes, hidden columns, mark-ups, notes) shall be
17 expanded and rendered in the image file.

18 3. All embedded objects (Word documents, Excel spreadsheets, .wav files, etc.) that are
19 found within a file—excepting automatically generated signature graphics and logos to the extent
20 they can be isolated and excluded—shall be extracted and produced. For purposes of production, the
21 embedded files shall be treated as attachments to the original file, with the parent/child relationship
22 preserved.

23 4. The parties agree to take reasonable steps based on industry standards to open
24 password-protected or encrypted files, including using commercially accessible software as well as
25 requesting passwords from those individuals which the Parties represent. If there are potentially
26 responsive encrypted or password protected documents, which the producing party has been unable
27 to, after reasonable efforts, to locate the password or decrypt, the parties shall meet and confer. If a
28 party believes that removing password protection is unduly burdensome, the parties shall meet and

1 confer.

2 5. The producing party shall disclose any substantive gaps, errors, or exceptions in the
3 collected or processed ESI.

4 **C. Family Relationships and Modern Attachments**

5 Parent-child relationships (association between an attachment and its parent document) shall
6 be preserved. The attachment(s) shall be produced adjacent to the parent document, in terms of Bates
7 numbers, with the first attachment being named with the next sequential number after the parent, and
8 any additional attachment(s) sequentially numbered after that first attachment. The Parties agree that
9 if any part of a Document or its attachments is responsive, the entire Document and attachments will
10 be produced as responsive, except any attachments that must be withheld or redacted and logged
11 based on privilege. Withheld documents should be replaced with slip sheets.

12 The producing party shall use best efforts to produce hyperlinked documents and “Modern
13 attachments” contained within emails or other Unstructured Data in a reasonably usable form that
14 will identify the connection between the “parent” message (the originating message containing the
15 modern attachment) and the modern attachment, to the extent the producing party’s internal systems
16 reasonably allow for automated collection and identification of such Modern attachments. The
17 producing party shall meet and confer with the requesting party to discuss proposed formats of
18 production for modern attachments. To the extent that a unique modern attachments points to a
19 drive, folder, or other ESI that is not an individual file, parties shall meet and confer to discuss
20 production.

21 **D. Short Messages**

22 Short Messages, including text, Microsoft Teams, WhatsApp, and Slack messages, if any,
23 shall be produced in a searchable format that preserves the presentational features of the original
24 messages, such as emojis, images, video files, animations, and the like. Short Messages must not be
25 converted to non-unitized file formats such as PDF or TIFF. In general, Short Messages should be
26 produced in the same format as that in which they were exported for purposes of collection, search,
27 or review.
28

E. Custodial Mobile Device Data

Prior to any production of responsive data from mobile devices, the producing party shall discuss the potential export formats and the method and tool used for extraction.

F. Redacted Documents

Documents that contain redactions, including any associated family members, will be produced in single-page TIFF format (300 DPI resolution) with corresponding document-level extracted text and a delimited DAT file containing the metadata fields outlined in Exhibit A to the extent that such metadata fields are not part of the redaction. Documents produced with redactions shall identify in some manner (such as through highlighting in black or through the use of redaction boxes) the location and extent of redacted information. To the extent a party deems production of redacted TIFF images of Excel spreadsheets significantly degrades the usability of the document, the parties agree to meet and confer regarding alternate production methodologies of the redacted information.

G. Structured Database Systems

The default form for production of database information is “fielded tables” where each row represents a database record and each column represents a single data field, such as a Microsoft Excel spreadsheet or delimited text file. The producing party will provide a description of the fields contained in their structured databases, including any codes used. Upon review of the report, the requesting party may make reasonable requests for additional information to explain the database schema, codes, abbreviations, and different report formats or to request specific data from identified fields.

VII. PHASING

Following the Initial Disclosures, the parties agree to supplement Order with an ESI Protocol that will address any phasing of ESI production, as stipulated by the parties in their Joint Case Management Conference Statement. *See* ECF 50, p. 8.

VIII. DOCUMENTS PROTECTED FROM DISCOVERY

The parties intend to address inadvertent disclosures in a separate stipulation.

1 **IX. MODIFICATION**

2 The parties agree to address any remaining issues concerning ESI including preservation,
 3 search & collection, processing, and filtering and review in a supplemental ESI Protocol, as
 4 stipulated by the parties in their Joint Case Management Conference Statement. *See* ECF 50, p. 8.
 5 This Stipulated Order may also be modified by another Stipulated Order of the parties or by the
 6 Court.

7 **IT IS SO STIPULATED**, through Counsel of Record.

8 Dated: July 11, 2024

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Attorneys for Defendant Tesla Inc.

1 **IT IS SO ORDERED** that the forgoing Stipulation is approved.
2
3

4 Dated:

5 HON. JACQUELIN S. CORLEY
6 UNITED STATES DISTRICT JUDGE
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8

9 **LOCAL RULE 5-1(i)(3) ATTESTATION**

10 I, James H. Baker, am the ECF User whose ID and password are being used to file the Joint
11 Case Management Conference Statement. In compliance with Local Rule 5-1(i)(3), I hereby attest
12 that Thomas E. Hill concurs in this filing.

13 Dated: July 11, 2024

14 /s/ James H. Baker
15 James H. Baker, Senior Trial Attorney
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FORM OF PRODUCTION / LOAD FILE SPECIFICATIONS

A. Form of Production

The parties agree to make all reasonable efforts to produce documents in accordance with the specifications identified in this document. As set forth with greater particularity below, some ESI will be produced in native format, while PDF-format and hardcopy documents will be produced in single-page TIFF format (300 DPI resolution) with a delimited DAT file containing the metadata fields outlined in Attachment 1, accompanied by an Opticon (OPT) cross-reference file and corresponding document-level extracted text. Before making a production that does not conform to these specifications, the producing party shall meet and confer with the receiving party to explain why the production will not conform and explore alternative formats. The Commission uses the Relativity suite of e-Discovery software.

1. Email and User-Created Files

The parties agree to make all reasonable efforts to produce documents in accordance with the specifications identified in this section.

Email will be produced in single-page TIFF format (300 DPI resolution) with a delimited DAT file containing the metadata fields outlined in Attachment 1, accompanied by an Opticon (OPT) cross-reference file and corresponding document-level extracted text.

All spreadsheet and presentation files (e.g., Excel, PowerPoint) shall be produced in native format with an associated placeholder image. All hidden text (e.g., track changes, hidden columns, mark-ups, notes) shall be expanded and rendered in the image file. All non-graphic embedded objects (Word documents, Excel spreadsheets, .wav files, etc.) that are found within a file shall be extracted and produced. For purposes of production, the embedded files shall be treated as attachments to the original file, with the parent/child relationship preserved. Any data (whether individual files or digital containers) that is protected by a password, encryption key, digital rights management, or other encryption scheme, shall be decrypted prior to processing for production, to the extent practicable.

2. Social Media

Prior to any production of responsive data from social media (e.g., Twitter, Facebook, LinkedIn, internet-based email accounts, etc.), the producing party shall meet and confer with the receiving party regarding the potential export formats.

3. Redacted Documents

Documents that contain redactions, including any associated family members, will be produced in single-page TIFF format (300 DPI resolution) with corresponding document-level extracted text and a delimited DAT file containing the metadata fields outlined in Attachment 1 to the extent that such metadata fields are not part of the redaction. To the extent a party deems production of redacted TIFF images of Excel spreadsheets significantly degrades the usability of the document, the parties agree to meet and confer regarding alternate production methodologies of the redacted information.

4. Structured Data: Database Systems

Information from structured database systems shall be produced through existing report formats available in the associated applications, including but not limited to Microsoft Excel spreadsheet or delimited text format, if available. If a receiving party believes that the format of a produced report is inadequate or does not fully respond to a discovery request, the parties agree to meet and confer regarding other methods to produce responsive information from the Database Systems.

5. Paper Documents

Documents kept in paper format in the usual course of business shall be produced in scanned and logically unitized format. Scanning shall be to single-page, TIFF Group IV, 300 dots per inch (dpi). Each page shall include the Bates/PageID number at the bottom of the page. The file name for the TIFF image shall be the Bates/PageID Number. Scanned documents shall also be converted into searchable text using optical character recognition (OCR), extracted, and saved as a text file named with the Bates/PageID Number. The OCR shall include the Bates/PageID number for each page. The load file (see A.8 below) shall include a field for the OCR/Text file path.

6. PDF Files

Documents kept in PDF format in the usual course of business shall be produced in logically unitized format. Such documents shall not be combined, merged, or otherwise joined if they are not so organized in the usual course of business. Files usually maintained in a different file type, but converted to PDF format and produced, will not be accepted.

7. “Logically Unitized” Defined

“Logically unitized” means that all pages that belong together as a document, and only those pages, are produced as one document, with relationships such as parent and child attachments maintained. Documents that are bulk-scanned to non-unitized files will not be accepted.

8. Load File

Each production shall be accompanied by a delimited-load file in .DAT format that establishes the proper document breaks and maintains the parent/child relationships (BegAttach and EndAttach). The load file shall use the delimiters identified below and include all applicable data for the fields identified in Attachment 1.

Value	Character	ASCII Number
Column	¶	020
Quote	”	254
Newline	®	174
Multi-Value	;	059
Nested Value	\	092

The load file should be accompanied by an Opticon (OPT) cross-reference file that references one Bates number per line.

B. Transmission and Delivery

1. Volumes and Folders

Provide separate folders for images, text, and load files. Provide a Volume Number identifier for each production that is unique and runs in succession from the last volume

produced (e.g., VOL001, VOL002, VOL003).

2. Acceptable Means of Delivery

Where possible, productions should be delivered by electronic means. Productions may be delivered by file-sharing services such as Drop Box or Hightail by sending the download to the attorneys identified in the parties' electronic service lists. See ECF 50, p. 17. Productions greater than 40 MB or split into multiple emails whose collective size is greater than 40 MB, will not be accepted by email.

Where production by electronic means is not feasible, productions may be saved to external media (CD/DVD, USB drive, external HDD drive) and delivered by UPS or FedEx to the following address:

US EEOC
OGC\LMS\LitSupport
Attn: Amanda Beckerink or Richard Van Nelson
131 M Street, NE
5th Floor
Washington, D.C. 20507

Delivery by U.S. Postal Service is not sufficient, because USPS deliveries to the EEOC are subjected to X-RAY security scanning, which damages data stored on external media.

3. Encryption

Productions may be encrypted using WinZip or PKWare. The Commission will not accept productions that require the installation of other applications to read the data or remove encryption.

Attachment 1**METADATA FIELDS**

Field name	Field Description	Field Type	Field Value
CUSTODIAN	Custodian(s)/Source(s) - format: Last, First or ABC Dept.	Text	160
AUTHOR	Creator of the document	Text	500
BEGDOC#	Start Bates (including prefix) - No spaces	Text	60
ENDDOC#	End Bates (including prefix) - No spaces	Text	60
PGCOUNT	Page Count	Number	10
GROUPID	Contains the Group Identifier for the family, in order to group e-mails with their attachments	Text	60
BEGATTACH	Start Bates number of parent document in attachment range	Text	60
ENDATTACH	End Bates number of last attachment in attachment range	Text	60
REDACTIONS	Identifies whether the document contains redactions.	Boolean	10
RECORD TYPE	Use the following choices: Image, Loose E-mail, E-mail, E-Doc, Attachment, Hard Copy or Other. If using Other, please specify what type after Other	Text	60
FROM	Author - format: Last name, First name	Text	160
TO	Recipient- format: Last name, First name	Text – semicolon delimited	Unlimited
CC	Carbon Copy Recipients - format: Last name, First name	Text – semicolon delimited	Unlimited
BCC	Blind Carbon Copy Recipients - format: Last name, First name	Text – semicolon delimited	Unlimited
SUBJECT	Subject/Document Title	Text	Unlimited
CONVINDEX	E-mail system ID used to track replies, forwards, etc.	Text	Unlimited
TEXT FILEPATH	Relative file path of the text file associated with either the extracted text or the OCR	Text	Unlimited
DATE TIME SENT	Date Sent (Use Time Zone of Collection Locality)	Date and Time	MM/DD/YYYY HH:MM:SS

DATE TIME CRTD	Date Created (Use Time Zone of Collection Locality)	Date and Time	MM/DD/YYYY HH:MM:SS
DATE TIME MOD	Date Last Modified (Use Time Zone of Collection Locality)	Date and Time	MM/DD/YYYY HH:MM:SS
DATE TIME ACCD	Date Accessed (Use Time Zone of Collection Locality)	Date and Time	MM/DD/YYYY HH:MM:SS
FILE SIZE	Native File Size in bytes	Number	10
FILE NAME	File name - name of file as it appeared in its original location	Text	Unlimited
FILE EXTENSION	Extension for the file (e.g. .doc, .pdf, .wpd)	Text	10
FILEPATH	Data's original source full folder path	Text	Unlimited
NATIVE LINK	Relative file path location to the native file	Text	Unlimited
FOLDER ID	Hard Copy container information (e.g., folder or binder name)	Text	Unlimited
MD5 HASH	MD5 Hash value (used for deduplication or other processing) (e-mail hash values must be run with the e-mail and all of its attachments)	Text	Unlimited
CONFIDENTIALITY	Documents designated as Confidential, as outlined in the parties' Stipulated Protective Order.	Text	Unlimited
PRIOR BATES BEG	Begin Bates numbers of document as previously produced in related <i>Vaughn</i> and <i>CRD</i> cases.	Text	Unlimited